

1      **Tricia Wang (CA Bar No: 178473)**  
2      LAW OFFICE OF TRICIA WANG  
3      39159 Paseo Padre Parkway, Suite 205  
4      Fremont, CA 94538  
5      Telephone: (510) 791-0232  
6      Fax: (510) 791-5609

4 Attorney for Petitioner: Chen, Xiling

5

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE, CALIFORNIA**

8 Xiling CHEN )  
9 )  
10 Plaintiff, )  
11 ) Case No. C 07-4698 JW  
12 vs. )  
13 Alberto Gonzales, Attorney General of the ) [PROPOSED] ORDER  
14 United States; Michael Chertoff, Secretary of the ) GRANTING PETITIONERS  
15 Department of Homeland Security; Emilio Gonzalez ) MOTION FOR  
16 Director of United States Citizenship & Immigration ) SUMMARY JUDGMENT  
17 Services; Robert Mueller, Director of the Federal )  
18 Bureau of Investigations; Gerard Heinauer, )  
19 Director of the Nebraska Service Center )  
Defendants )  
\_\_\_\_\_)

20 The motion of Petitioner Xiling Chen for summary judgment came on regularly for  
21 hearing before this Court on April 21, 2008. Petitioner filed a petition for writ of mandamus  
22 based on Respondents' delay in adjudicating her application for lawful permanent  
23 residency. The application has been pending for over three years and ten months.

Mandamus is an extraordinary remedy and is available to compel a federal official  
25 to perform a duty only if: (1) the individual's claim is clear and certain; (2) the official's  
26 duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt,  
27 and (3) no other adequate remedy is available. *Patel v. Reno*, 134 F.3d 929, 931 (9<sup>th</sup>  
28

1 Cir.1997); Azurin v. Von Raab, 803 F.2d 993, 995 (9<sup>th</sup> Cir.1986). The Court finds that  
2 both the Immigration and Nationality Act, and its implementing regulations, create a  
3 mandatory and non-discretionary duty that Respondents adjudicate the pending  
4 applications for permanent residency. See §8 C.F.R. § 245.2. The Court further finds that  
5 the Administrative Procedures Act (“APA”) requires that such applications be adjudicated  
6 within a ‘reasonable time.’ 5 U.S.C. §555(b). The Court finds that the three years and ten  
7 months delay in adjudicating Petitioner’s application is unreasonable. See e.g. Yu v.  
8 Brown, 36 F.Supp.2d 922, 928-32 (D.N.M.1999), (applying the APA’s reasonable  
9 requirement to similar regulatory provisions); Kim v. Ashcroft, 340 F. Supp 2d 384, 391-  
10 92 S.D.N.Y.2004)(same).

12 After considering the motion for summary judgment, the parties’ responses,  
13 arguments of counsel and all other matters presented to the Court, IT IS HEREBY  
14 ORDERED THAT Plaintiff’s motion for summary judgment be and hereby is  
15 GRANTED. The Court orders that the Petitioner’s application for lawful permanent  
16 residency be adjudicated within ten (10) days of this order. In case of visa becomes  
17 unavailable, the Court shall retain jurisdiction over this matter and orders that Petitioner’s  
18 application be adjudicated within thirty (30) days of an immigrant visa becoming  
19 available to her.

22  
23 Date: \_\_\_\_\_

24 JAMES WARE  
25 United States District Judge  
26  
27  
28